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881—37——1

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 199

UNITED STATES OF AMERICA, PETITIONER

v.

BEN B. JACKSON, BY HIS GUARDIAN AD LITEM, ALPHENE W. DOWELL

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered in the above entitled case April 7, 1937.

OPINIONS BELOW

The opinion of the District Court for the Eastern District of South Carolina (R. 46–49) in denying the Government's motion for a new trial is reported in 14 F. Supp. 132. The opinion of the Circuit Court of Appeals is reported in 89 F. (2d) 572 (R. 60–64).

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 7, 1937 (R. 64). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

I

Whether the provisions for repeal contained in Section 17 of the Economy Act of March 20, 1933, were effective to rescind the right of a beneficiary of so-called "automatic insurance" to benefits which had been granted on account of the death of a soldier by Section 401 of the War Risk Insurance Act, as amended subsequent to the soldier's death.

The decision of this question involves the consideration of the following questions—

(a) Whether the beneficiary's right to "automatic insurance" benefits was founded upon contract.

(b) Whether the right, if not contractual, was nevertheless a vested property right protected from rescission by the Fifth Amendment.

(c) Whether Congress intended the provisions for repeal in Section 17 of the Economy Act to be effective as a rescission of rights to "automatic insurance" benefits if the Act was void insofar as it purported to rescind rights under contracts of yearly renewable (war risk) term insurance.

II

Whether there was substantial evidence of the existence of a common-law marriage between the infant plaintiff's father and mother at the time of his birth.[1]

STATUTES INVOLVED

Section 401 of the War Risk Insurance Act as amended December 24, 1919, c. 16, 41 Stat. 371, 374–375, provides in part:

> Any person in the active service on or after the 6th day of April, 1917, and before the 11th day of November, 1918, who, while in such service, and before the expiration of one hundred and twenty days after entrance into or employment in the active service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each; and any person inducted into the service by a local draft board after the 6th day of April, 1917, and before the 11th day of November, 1918, who, while in such service, and before being accepted and enrolled for active military or naval service, becomes or has become totally and permanently dis-

[1] The decision of this question by the Circuit Court of Appeals is not urged as a ground for the granting of this petition, but petitioner desires to reserve the point for argument in the event that the petition should be granted.

> abled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his widow from the time of his death and during her widowhood; or if there is no widow surviving him, then to his child or children; or if there is no child surviving him, then to his mother; or if there be no mother surviving him, then to his father, if and while they survive him: *Provided, however,* That no more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid. The amount of the monthly installments shall be apportioned between children as may be provided by regulations: * * *.

The War Risk Insurance Act was repealed by Sections 600 and 601 of the World War Veterans' Act, June 7, 1924, c. 320, 43 Stat. 607, 629–630. But all accrued rights and liabilities under the former Act were saved by Section 602 of the latter, which provided:

> The repeal of the several Acts as provided in sections 600 and 601 hereof shall not affect any act done or any right or liability

accrued, or any suit commenced before the said repeal, but all such rights and liabilities under said Acts shall continue and may be enforced in the same manner as if said repeal had not been made; * * *.

Section 17 of the Act of March 20, 1933, c. 3, 48 Stat. 8, 11, known as the Economy Act, provides in part:

> All public laws granting medical or hospital treatment, domiciliary care, compensation and *other allowances,* pension, disability allowance, or retirement pay to veterans and the dependents of veterans of * * * the World War, * * * are hereby repealed, and all laws granting or *pertaining to yearly renewable term insurance* are hereby repealed, but payments in accordance with such laws shall continue to the last day of the third calendar month following the month during which this Act is enacted. The Administrator of Veterans' Affairs under the general direction of the President shall immediately cause to be reviewed all allowed claims under the above referred to laws and where a person is found entitled under this Act, authorize payment or allowance of benefits in accordance with the provisions of this Act commencing with the first day of the fourth calendar month following the month during which this Act is enacted and notwithstanding the provisions of section 9 of this Act, no further claim in such cases shall be required: ***Provided,*** That nothing contained in this sec-

> tion shall interfere with payments heretofore made or hereafter to be made under contracts of yearly renewable term insurance which have matured prior to the date of enactment of this Act and under which payments have been commenced, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance, or which may hereafter be rendered in any such suit now pending: * * * [Italics ours.]

Other statutes mentioned herein, together with a Congressional Committee Report and Bulletin No. 1 of the Treasury Department, are contained in the Appendix, *infra*, pp. 19–24.

STATEMENT

Ben B. Jackson, the respondent, an infant, brought this suit through his guardian in the District Court of the United States for the Eastern District of South Carolina to recover so-called "automatic insurance" benefits of $25 per month under Section 401 of the War Risk Insurance Act, as amended, by reason of the death of Jake Jackson, who had been drafted into the military service of the United States on April 27, 1918, and had died two weeks later, on May 11, without having applied for war-risk insurance. It was alleged in the complaint that the infant plaintiff was the only child of Jake Jackson, and that there was a disagreement with the Veterans' Administration as to

his claim. (R. 1–3.) The Government's answer contained a general denial of all of the allegations in the complaint except those as to the military service and death of Jake Jackson, and a specific denial that the infant plaintiff was his child, and set up as a separate defense that the suit was barred by the Federal statutes of limitations. (R. 3–4.)

At the trial before a jury it was established that in 1935 a claim for "automatic insurance" benefits was filed by the infant plaintiff's guardian on his behalf and was denied by the Veterans Administration. (R. 9–11.) The rest of the evidence related to the relationship existing between the infant plaintiff's father, Jake Jackson, and his mother at the time of his birth. (R. 12–28.)[2]

At the close of the case the Government moved for a directed verdict on the ground that there was no substantial evidence of the existence of a common-law marriage between Jake Jackson and the infant plaintiff's mother, and also upon the juris-

[2] The purpose of this evidence was to establish the existence of a common-law marriage between the infant plaintiff's parents at the time of his birth and thus establish his legitimacy. His counsel agreed that he was not entitled to recover "automatic insurance" benefits as the "child" of Jake Jackson within any of the meanings of the word as variously defined in Section 22 of the War Risk Insurance Act (Act of October 6, 1917, c. 105, 40 Stat. 401; Act of December 24, 1919, c. 16, 41 Stat. 371) unless he could establish his legitimacy (R. 30).

dictional grounds that there was no "legal disagreement" and that the action was barred by the limitation provisions in the Act of July 3, 1930 (amending Section 19 of the World War Veterans' Act, 1924). (R. 28–29.) The motion was overruled and an exception noted. (R. 29.) A verdict was returned for the infant plaintiff (R. 38) and the Government moved the court to set it aside and to grant a new trial upon the ground that the verdict was contrary to the "greater weight" of the evidence and also upon the ground that "automatic insurance was a gratuity" and that the infant plaintiff's "action thereon was barred by the repealing clauses of the Economy Act of 1933". (R. 45.) The motion was denied in an opinion delivered by the trial judge (R. 46–49) holding in effect that the verdict was amply supported by the law and the evidence. He expressed doubt as to his power to consider the point relating to the repeal of the "automatic insurance" provisions of the Economy Act "on motion in arrest of judgment" in view of the fact that it had not been raised at the trial (R. 47), but expressed the opinion nevertheless that the infant plaintiff's right to "automatic insurance" benefits was founded upon contract, and hence could not be rescinded by the repealing clauses in the Economy Act (R. 48–49).

The Government filed exceptions to the denial of its motion upon grounds directed separately to the court's rulings upon each of the points raised

by the motion. (R. 49–50.) Judgment was entered for the infant plaintiff awarding installments of "automatic insurance" benefits in the sum of $25 per month from May 11, 1918, to January 11, 1936, the due date of the installment immediately preceding the trial of the case. (R. 4–6.) A bill of exceptions was settled and filed in due time (R. 6–51), and an appeal on behalf of the Government was duly prayed, allowed, and perfected (R. 54–57). Error was separately assigned to the rulings on the motions for a directed verdict and for a new trial, and each point made by the Government in the court below was covered by a separate assignment. (R. 54–56.) The Government, however, later abandoned all except the two relating to the Economy Act and the alleged common-law marriage, resectively.[3]

The Circuit Court of Appeals, in affirming the judgment, held that the Economy Act was ineffective to repeal the provisions as to "automatic insurance", and that there was substantial evidence

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[3] The other two points, as to lack of disagreement and limitations, respectively, would seem unsupported under the law and the evidence. The "disagreement" necessary to jurisdiction under Section 19 of the World War Veterans' Act, as amended (U. S. C., Title 38, Section 445) was established by the denial of the guardian's claim, and the suit was brought in time under the saving clause in that Section which extends the limitation for suit by an infant until three years after the removal of his disability. *Johnson* v. *United States*, 87 F. (2d) 940 (C. C. A. 8th).

of the existence of the alleged common-law marriage. It is stated in the opinion (R. 62) that although support for the Government's contention that "automatic insurance" was abrogated by the Economy Act is found in *Stephens* v. *United States,* 85 F. (2d) 570 (C. C. A. 6), and in the unreported decision of the District Court for the District of Nebraska in *Luther H. Dill* v. *United States,* this position is untenable "because the intention of Congress to place automatic insurance in the same category as insurance for which application has been made seems to be clearly set out in the Act"; that it was obvious that Congress considered "the induction of the soldier into the service and his disability or death * * * as equivalent to an application for and a grant of insurance", and "accepted the military service as the basis of the contract." Accordingly the court held that the infant plaintiff, as beneficiary, acquired a vested property right by contract to receive the benefits provided in the statute, which was protected from impairment by the Fifth Amendment, citing *Lynch* v. *United States,* 292 U. S. 571.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that Section 17 of the Economy Act of March 20, 1933, was not effective to rescind the infant respondent's right to "automatic insurance" benefits under Section 401, War Risk Insurance Act, as amended;

2. In holding in effect that the infant respondent's right to "automatic insurance" benefits under Section 401 of the War Risk Insurance Act, as amended, was a vested property right founded upon contract and hence protected from impairment by the Fifth Amendment;

3. In holding that there was substantial evidence that the infant respondent was the legitimate son of Jake Jackson;

4. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals is squarely in conflict with a decision of the Circuit Court of Appeals for the Sixth Circuit, and is substantially in conflict with decisions of this Court.

1. The court below held in effect that respondent's right to so-called "automatic insurance" benefits was founded upon a contract and hence could not be rescinded by the provisions in Section 17 of the Economy Act of March 20, 1933, repealing all laws "granting * * * compensation and *other allowances,* pension, disability allowance, * * * and all laws granting or *pertaining to yearly renewable term insurance* * * *." The decision in this respect is clearly in conflict with *Stephens* v. *United States,* 85 F. (2d) 570 (C. C. A. 6th) in which it was held as one of the grounds for denying the plaintiff's right to "automatic insurance" benefits that the statute granting it was repealed by

Section 17 of the Economy Act of March 20, 1933. Indeed, the conflict with this decision and with the unreported decision of the District Court for the District of Nebraska in *Luther H. Dill* v. *United States*[4] on the same point is conceded in the opinion of the court below. (R. 22–24.)

2. Furthermore it is submitted that the court below, in holding, in effect, that the enactment of the provisions for "automatic insurance" in Section 401 of the War Risk Insurance Act, as amended, constituted a contract of insurance entered into between the Government and Jake Jackson, the soldier, ignored the fundamental principle that both mutual assent and valuable consideration are essential elements to the creation of a contract. Mutual assent was obviously lacking since Jake Jackson was dead when the provisions for the payment of "automatic insurance" benefits, on account of his death, were enacted. At the time of his death, May 11, 1918, Section 401 of the War Risk Insurance Act covered only persons who had died or become totally permanently disabled while in active service between April 6, 1917, and 120 days after publication of the insurance contract (Act of October 6, 1917, Appendix, *infra,* pp. 19–20), which occurred October 15, 1917, by the promulgation of Bulletin No. 1 of the Treasury Department (Appendix, *infra,* pp. 21–22). Since Jake Jackson died

[4] The pertinent parts of the opinion in this case appear in the Appendix, *infra*, pp. 22–24.

more than 120 days after such application respondent's right to benefits on account of his death did not arise until Section 401 was amended by the Act of December 24, 1919, *supra* (pp. 3–4), to cover those who had been drafted between April 6, 1917, and November 11, 1918.

It is further submitted that the court below erred in holding in effect that military service, which in Jackson's case and that of many others was compulsory, constituted a consideration sufficient to support a contract binding upon the Government (see *Choate* v. *Trapp,* 224 U. S. 665, 674–675) and was intended by Congress as the consideration for a contract to pay the benefits in question.

Moreover, it could hardly be urged that respondent was a party to the alleged contract in view of the provisions in the statute that the soldier himself "shall be deemed to have applied for and to have been granted insurance."

In short, it is submitted that respondent's rights to benefits under the statute were substantially similar to those of a pensioner or of any other beneficiary of a Governmental gratuity and like the latter were revocable at any time. *Lynch* v. *United States,* 292 U. S. 571, 577; *Cummings* v. *Deutsche Bank,* 300 U. S. 115, 122–124.

3. While it is no doubt true that Congress intended to invest "automatic insurance" with some of the attributes of a contract of insurance and

possibly to grant the privilege of bringing suit against the Government upon claims for such insurance,[5] it by no means follows that there was an intention to grant the beneficiaries of such "insurance" vested and irrevocable rights in the absence of the elements essential to a valid binding contract. Indeed, there is a strong presumption against the existence of such an intention under the well settled rule "that grants by the state are to be construed strictly against the grantees, and that nothing will be presumed to pass except it be expressed in clear and unambiguous language." *Pearsall* v. *Great Northern Ry.,* 161 U. S. 646, 664; *Reichelderfer* v. *Quinn,* 287 U. S. 315, 321. It is submitted that the language of the statute in question is far from clear and unambiguous in this respect, in view of the absence of any provision that the rights granted were irrevocable.

4. Furthermore it is submitted that, in the absence of the elements essential to a contract, Congress lacked the power to make the grant of the benefits in question irrevocable even if it had so intended. Cf. *Pearsall* v. *Great Northern Ry., supra,* p. 667. There is no material difference between the provisions in question and those grant-

[5] The court below cites several cases (R. 62–63) in which it was held or assumed that suit might be brought for "automatic insurance" benefits under the statutory provisions giving a right of action on a claim under a "contract of insurance."

ing pensions or other gratuitous allowances to soldiers. Even if it be assumed that Congress intended that a presumptive contract should arise from the automatic insurance provisions, it would seem wholly unreasonable that vested rights could be thus created by a statutory fiction.

United States v. *Weaver,* 86 F. (2d) 372 (C. C. A. 4th), cited in the opinion of the court below, is distinguishable. In that case, which involved yearly renewable term insurance and not so-called "automatic insurance", the court below held that Congress lacked the power to withdraw by the Economy Act the privilege of applying unpaid compensation to the revival of a policy of insurance lapsed for nonpayment of the premiums, granted by Section 305 of the World War Veterans' Act, 1924 as amended (U. S. C., Title 38, Section 516). The decisive point in that case, however, was that Section 305 had already been incorporated prospectively by reference in the war risk insurance contract itself under the provisions of Bulletin No. 1, Treasury Department (Appendix, *infra,* pp. 21–22), and hence that the rights provided in that section were plainly based on a contract.

5. Furthermore, there would seem to be no doubt that the Congress intended to include the statutory grant of "automatic insurance" benefits among the provisions repealed by Section 17 of the Economy

Act. At the time that Act was passed Congress was fully cognizant of the need of stringent economy (see Committee Report, Appendix, *infra,* p. 22, and *Lynch* v. *United States, supra,* p. 580) and evidently intended to rescind all rights under laws enacted for the benefit of World War veterans except those derived from "converted" insurance policies.[6] It was apparently assumed moreover that there was no difference between the legal status of the gratuitous benefits which had been granted under the previous laws and those derived from outstanding contracts of yearly renewable term insurance. *Lynch* v. *United States, supra,* p. 585.

Under the circumstances it would seem unreasonable to impute an intention to the Congress to exempt "automatic insurance" from a statute which was obviously designed to repeal not only laws granting pensions and other gratuitous allowances but also those under which contracts of insurance were issued. The phrase "other allowances" in Section 17 appears to be sufficiently broad to embrace "automatic insurance" (*Luther H. Dill* v. *United States, supra*), but in any event it cannot be doubted that it is embraced either in that phrase or in the phrase "laws * * * pertaining to yearly renewable term insurance," for otherwise

[6] The term "converted" has been used to describe all forms of insurance issued by the Government subsequent to the original contracts of yearly renewable term insurance. See *United States* v. *Madigan*, No. 562, October Term, 1936.

the manifest intention of Congress would be frustrated.

6. Furthermore, there would seem no room for doubt that Congress intended the repeal to stand as to "automatic insurance" even if it was invalid with reference to yearly renewable term insurance, as was held in *Lynch* v. *United States, supra.* The part of Section 17 repealing the provisions for "automatic insurance" was clearly separable from the portion which repealed the provisions for yearly renewable term insurance. (*Allen* v. *Louisiana,* 103 U. S. 80, 84; *Field* v. *Clark,* 143 U. S. 649, 696; *Loeb* v. *Township Trustees,* 179 U. S. 472, 490; *Berea College* v. *Kentucky,* 211 U. S. 45, 55.) Moreover the provisions for "automatic insurance" and those for yearly renewable term insurance were evidently both regarded as in the same category with laws granting pensions, disability allowances, and other gratuities specifically mentioned in the repealing section. Cf. *Lynch* v. *United States, supra,* p. 585. It would be manifestly unreasonable to impute to Congress an intent to make the repeal of the latter contingent upon the validity of the repeal of laws granting yearly renewable term insurance, and there would seem no reason under the circumstances for imputing a different intention with respect to "automatic insurance" especially in view of the realization on the part of Congress as to the great need of economy.

7. The instant case is one of twenty-eight now in litigation involving the question whether the provisons as to "automatic insurance" were repealed by the Economy Act.

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

JULY 1937.

APPENDIX

The Act of October 6, 1917, c. 105, 40 Stat. 398, 409, 410 (amending the War Risk Insurance Act), provides in part as follows:

> SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000, or more than $10,000, upon the payment of the premiums as hereinafter provided.
>
> SEC. 401. That such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation, except that those persons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred and twenty days thereafter and while in such service. Any person in the active service on or after the sixth day of

April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child, or widowed mother if and while they survive him: *Provided, however,* That not more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid; and in that event the amount of the monthly installments shall be apportioned between them as may be provided by regulations.

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance.

* * *

* * * * * *

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical ex-

amination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election.

SEC. 405. That in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides. * * *

Bulletin No. 1 (Regulations and Procedure, U. S. Veterans' Bureau (1930) Part II, pp. 1233, 1235) was promulgated by the Director of the Bureau of War Risk Insurance, Treasury Department, on October 15, 1917, and provides, in part, as follows:

> Under the authority granted by Congress in an act amending "An act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department' approved September 2, 1914, and for other purposes", approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of

> which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract: * * *.

In the House Committee Report (73d Cong., 1st Sess., House Report No. 1, March 11, 1933, p. 1) accompanying the bill which became the Economy Act, it is said:

> The Committee on Economy, to whom was referred the bill (H. R. 2820) to maintain the credit of the United States Government, having considered the same, report favorably thereon with a recommendation that the bill do pass * * * because the immediate evidence of substantial retrenchment necessary to successfully conduct the refunding operation * * * because substantial retrenchment alone can prevent a vicious uncontrolled inflation of the currency * * * evidence of substantial reduction in expenditures alone can restore confidence in the ability of the United States Government to meet its obligations * * * the legislation proposed by the President is necessary * * *.

DISTRICT OF NEBRASKA, LINCOLN DIVISION

LUTHER H. DILL

v.

UNITED STATES OF AMERICA

* * * * *

Decision of Judge Munger

In a case of this kind there must be an insurance policy and that requirement is satisfied by the automatic insurance granted by Congress. There must be a permanent and

total disability during the term of the policy, and plaintiff has offered to prove that. There must be a claim made for the disability and such refusal to grant or act upon the claim as amounts to disagreement under the statute, and suit must be brought within the time limited by the statute.

* * * * *

There is another reason why this suit cannot be maintained. An examination of the *Lynch case* (*Lynch* v. *U. S.*, 292 U. S. 571) shows that the question decided in that case was that a contract of yearly renewable term insurance on which the soldier had paid the premiums was property which the Government could not confiscate by the indirect way of saying that all laws granting or pertaining to yearly renewable term insurance are hereby repealed. I think that clause in the Economy Act does not apply to this insurance policy because it only covers yearly renewable term insurance, and this is not renewable insurance. It was only insurance to last for a few months, until the soldier could apply for and obtain his regular insurance. It was not the intention of Congress in that clause to repeal the laws relating to automatic insurance.

But there is another provision in section 17 of the Economy Act to which Judge Brandeis refers, which reads: "All public laws granting medical or hospital treatment, domiciliary care, compensation, and other allowances, pensions, disability allowances, or retirement pay, etc., are hereby repealed." I am of the opinion that that clause covers automatic insurance, and that no suit can be maintained to recover for automatic insurance since the passage of the Economy Act. In this *Lynch case* it is said: "War-risk in-

surance, while resembling in benevolence pensions, compensation allowances, hospital, and other privileges accorded former members of the Army and Navy or their dependents, differs from them in fundamental and legal incidents. Pensions, compensation, allowances, and privileges are gratuities. They involve no agreement of parties. The granting of them grants no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time under the discretion of Congress." A number of decisions of the Supreme Court are cited, such as *U. S.* against *Teller,* 107 U. S. 64, where it is stated: "No pensioner has a vested legal right to his pension. Pensions are the bounties of Government which Congress has the right to give, withhold, distribute, or recall in its discretion." The Economy Act (48 Stat. 9) declares: "All public laws granting * * * compensation and other allowances, pension disability allowances * * * are hereby repealed." This automatic insurance was in the nature of a gratuity, a pension, a disability allowance. No action may be maintained for automatic insurance since the Economy Act was passed in March 1933. I will direct a verdict for the defendant on these grounds, admitting that the plaintiff has offered sufficiently to prove that he had a total and permanent disability such as is defined in the war-risk statutes beginning on December 28, 1917, and continuing to this day and which will permanently continue.

U. S. GOVERNMENT PRINTING OFFICE: 1937